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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,039	04/13/2005	Erich Fuderer	566/42762	4659
23646 7590 12/26/2007 BARNES & THORNBURG LLP 750-17TH STREET NW SUITE 900 WASHINGTON, DC 20006-4675			EXAMINER NGUYEN, XUAN LAN T	
			ART UNIT 3683	PAPER NUMBER
			MAIL DATE 12/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/510,039

Applicant(s)

FUDERER ET AL.

Examiner

Lan Nguyen

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9 and 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/03/07
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/03/07 has been entered.

### ***Drawings***

2. The drawings were received on 10/03/07. Figures 3 and 4 are approved. Figures 1 and 2 are NOT approved because they are of poorer quality than figures 1 and 2, which are already in the file.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-9 and 11-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 23 to recite "a common first electric drive unit". However, there are still instances in the dependent claims where said claimed feature is not consistently recited.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 23, 2 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wickham et al. (US 4,546,298).

Re: claim 23, Wickham shows in figures 10 and 11 a brake application system, as in the present invention, including: an actuator as shown in figure 10 for generating a braking power as claimed, a combined device for an emergency release and auxiliary release of the brake as shown in figure 11 wherein the combined device is electrically actuated by a common first electric drive unit 201, see column 24, lines 21-29.

Re: claim 2, Wickham further shows the combined device to be integrated in a wear adjuster having a helical gear including a first screw connection part 206 as a threaded spindle, and a second screw connection part 210 as a nut as claimed.

Re: claim 3, Wickham shows the second screw connection part 210 to be actuated by the first common electric drive unit 201 as shown in figure 10.

Re: claim 8, Wickham further shows electric motor 201 with gearing 280, 281 which coupled with the second screw connection part 210 as shown in figure 10.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wickham et al. (US 4,546,298) in view of Huber, Jr. et al. (US 6,431,329).

Wickham's brake application system, as rejected above, lacks the slip clutch as claimed in claim 9. Huber Jr. teaches a well known slip clutch in figures 4, 11 and 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Wickham's brake application system to include a clutch as taught by Huber as a well known locking means for the brake system to properly work between an applying mode and releasing mode.

***Allowable Subject Matter***

9. Claims 4-7 and 11-22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The following is the Examiner's reason for indicating allowable subject matters. Wickham shows the concept of automatically releasing the brakes in order to perform maintenance or repair works the same as Applicant. In order to release the brakes for repair, the brakes have to be moved back further than a release just to stop braking action as stated by Wickham in column 24, lines 21-29. Wickham accomplishes this task by using a common electric motor 201 the same as Applicant. The difference being that Wickham uses one electric motor 201 to apply, to adjust and to release for various purposes while the instant invention uses two electric motors; and the task of releasing the brakes due to emergency and repair work is performed by the wear adjuster and not the actuator as claimed in claim 4. None of the prior art teaches or suggests this concept.

### ***Response to Arguments***

11. Applicant's argument dated 10/03/07 has been found to be persuasive regarding the drawing objections and the non-enablement rejection. The objections and rejection have been withdrawn.

12. The new ground of rejection based on Wickham is due to Applicant's amendments to the claims.

13. The new ground of rejection based on indefiniteness is also due to Applicant's amendments to the claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is (571) 272-7121. The examiner can normally be reached on Monday through Friday, 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Xuan Lan Nguyen/ 12-20-07  
Primary Examiner  
Art Unit 3683